

House Bill 1101 (AS PASSED HOUSE AND SENATE)

By: Representatives Coan of the 101<sup>st</sup>, Marin of the 96<sup>th</sup>, Smith of the 129<sup>th</sup>, Horne of the 71<sup>st</sup>, Dawkins-Haigler of the 93<sup>rd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to  
2 workers' compensation, so as to provide for the publication of decisions of the board; to  
3 provide for the entry and execution of judgment upon final orders and decisions regarding  
4 the Self-insurers Guaranty Trust Fund; to modify the notification period for revocation of a  
5 certificate of self-insurance; to revise provisions relative to the Self-insurers Guaranty Trust  
6 Fund; to provide immunity from liability for members of the board of trustees of the Self-  
7 insurers Guaranty Trust Fund; to provide for related matters; to repeal conflicting laws; and  
8 for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to workers'  
12 compensation, is amended by revising subsection (b) of Code Section 34-9-12, relating to  
13 employer's record of injuries, availability of board records, supplementary report on  
14 termination of disability, penalties, and routine reports, as follows:

15 "(b) The records of the board, insofar as they refer to accidents, injuries, and settlements,  
16 shall not be open to the public but only to the parties satisfying the board of their interest  
17 in such records and their right to inspect them. The board shall provide data contained on  
18 Employers' First Report of Injury forms reporting fatalities to the Georgia Department of  
19 Labor and the United States Department of Labor for use in the Census of Fatal  
20 Occupational Injuries Program. The board shall provide data to such other state and federal  
21 governmental entities or departments as required by law. Under such reasonable rules and  
22 regulations as the board may adopt, the records of the board as to any employee in any  
23 previous case in which such employee was a claimant shall be open to and made available  
24 to such claimant, to an employer or its insurance carrier which is called upon to pay  
25 compensation, medical expenses, or funeral expenses, and to any party at interest, except  
26 that the board may make such reasonable charge as it deems proper for furnishing

information by mail and for copies of records. Nothing in this subsection shall prohibit the board or its designees from publishing decisions of the board, provided adequate security measures have been taken to protect the identity and privacy of the parties."

## SECTION 2.

Said chapter is further amended by revising Code Section 34-9-106, relating to entry and execution of judgment on settlement agreement, final order or decision, or award and modification and revocation of orders and decrees, as follows:

"34-9-106.

(a) Any party in interest in a matter involving an injury may file in the superior court of the county in which the injury occurred or, if the injury occurred outside this state or if the matter does not involve an injury, in the county in which the original hearing was had, a certified copy of: ~~a settlement agreement approved by the board or of a final order or decision of the members or of an award of the members unappealed from or of an award of the members affirmed upon appeal,~~

(1) A settlement agreement approved by the board;

(2) A final order or decision of the board;

(3) An unappealed award of the board;

(4) An award of the board affirmed upon appeal; or

(5) Any final order or decision regarding the Self-insurers Guaranty Trust Fund,

whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by such court; provided, however, that where the payment of compensation is insured or provided for in accordance with this chapter, no such judgment shall be entered nor execution thereon issued except upon application to the court and for good cause shown.

(b) Upon presentation to the court of the certified copy of a decision of the board ending, diminishing, or increasing a weekly payment under the provisions of this chapter, particularly of Code Section 34-9-104, the court shall revoke or modify the order or decree to conform to such decision of the board."

## SECTION 3.

Said chapter is further amended by revising subsection (c) of Code Section 34-9-127, relating to issuance by the board of certificate of self-insurance, review, and revocation, as follows:

"(c) The board may, upon at least ~~60~~ 30 days' notice to the employer, and proof of receipt of same, and after a hearing, revoke the certificate upon satisfactory evidence for such

revocation having been presented. At any time after such revocation, the board may grant a new certificate to the employer upon ~~his~~ the employer's petition."

#### SECTION 4.

Said chapter is further amended by revising Article 10, relating to the Self-insurers Guaranty Trust Fund, as follows:

#### "ARTICLE 10

34-9-380.

It is the purpose of this article through the establishment of a guaranty trust fund to provide for the continuation of workers' compensation benefits due and unpaid, excluding penalties, fines, and attorneys' fees assessed against a participant, when a self-insured employer becomes insolvent.

34-9-381.

As used in this article, the term:

(1) 'Applicant' means an employee entitled to workers' compensation benefits.

(2) 'Board' means the State Board of Workers' Compensation.

(3) 'Board of trustees' means the board of trustees of the fund.

(4) 'Fund' means the Self-insurers Guaranty Trust Fund established by this article.

(5) 'Insolvent self-insurer' means a self-insurer who files for relief under the federal Bankruptcy Act, a self-insurer against whom involuntary bankruptcy proceedings are filed, ~~or~~ a self-insurer for whom a receiver is appointed in a federal or state court of this or any other jurisdiction ~~and who is determined~~, or a self-insurer who is determined by the board to be insolvent by in default of its workers' compensation obligations or requirements according to rules and regulations promulgated by the board of trustees and approved by the board.

(6) 'Participant' means a self-insurer who is a member of the fund and exclusive of those entities described in Article 5 of this chapter.

(7) 'Self-insurer' means a private employer, including any hospital authority created pursuant to the provisions of Article 4 of Chapter 7 of Title 31, the 'Hospital Authorities Law,' that has been authorized to self-insure its payment of workers' compensation benefits pursuant to this chapter, except any governmental self-insurer or other employer who elects to group self-insure pursuant to Code Section 34-9-152, ~~or~~ captive insurers as provided for in Chapter 41 of Title 33, or employers who, pursuant to any reciprocal

agreements or contracts of indemnity executed prior to March 8, 1960, created funds for the purpose of satisfying the obligations of self-insured employers under this chapter.

(8) 'Trustee' means a member of the Self-insurers Guaranty Trust Fund board of trustees.

34-9-382.

(a) There is established a Self-insurers Guaranty Trust Fund for the sole purpose of making payments in accordance with this article. The fund shall be administered by an administrator appointed by the ~~chairman~~ chairperson of the board of trustees with the approval of the board of trustees. All moneys in the fund shall be held in trust and shall not be money or property of the state or the participants and shall be exempt from levy, attachment, garnishment, or civil judgment for any claim or cause of action other than for not making payments in accordance with this article. The board of trustees shall be authorized to invest the moneys of the fund in the same manner as provided by law for investments in government backed securities.

(b) All returns on investments shall be retained by the fund. The funds of the Self-insurers Guaranty Trust Fund shall be for the purposes of compensating employees or their dependents who are eligible to receive workers' compensation benefits from their employers pursuant to the provisions of this chapter when, pursuant to this Code section, the board has determined that compensation benefits due are unpaid or interrupted due to the insolvency or default of a participant. Moneys in the fund may be used to compensate an employee or his or her dependents for any type of injury or occupational disease or death, including medical or rehabilitation expenses which are compensable under this chapter against a participant, and all claims for related administrative fees, operating costs of the ~~board of trustees~~ fund, attorneys' fees incurred by the board of trustees or at its direction, and other costs reasonably incurred by the board of trustees. Payment from the Self-insurers Guaranty Trust Fund shall be made in accordance with this chapter.

(c) As a condition of self-insurance, ~~a~~ all private ~~employer~~ employers, except any governmental self-insurer or other employer who elects to group self-insure pursuant to Code Section 34-9-152, captive insurers as provided for in Chapter 41 of Title 33, or employers who, pursuant to any reciprocal agreements or contracts of indemnity executed prior to March 8, 1960, created funds for the purpose of satisfying the obligations of self-insured employers under this chapter, must make application to and be accepted in the Self-insurers Guaranty Trust Fund.

34-9-383.

(a) Each member of the board of trustees shall be an employee of a participant. The board of trustees shall consist of a chairperson and six trustees elected by the participants. The

board of trustees shall initially be appointed by the Governor not later than August 1, 1990. Three of the initial trustees shall be appointed for terms of office which shall end on January 1, 1993, and the chairperson and the three other initial trustees shall be appointed for terms of office which shall end on January 1, 1995. Thereafter, each trustee shall be elected to a four-year term and shall continue to serve unless otherwise ineligible under subsection (b) of this Code section. No later than 90 days prior to the end of any member's term of office, the chairperson shall select a nominating committee from among the participants to select candidates for election by the participants for the following term. In the event the chairperson fails to complete his or her term of office, a successor ~~will~~ shall be elected by the board of trustees to fill the unexpired term of office.

(b) A vacancy in the office of any elected member of the board of trustees shall occur upon the member's resignation, death, or conviction of a felony; or when the trustee's employer no longer qualifies as a self-insured participant or the trustee is no longer an employee of a participant. The board of trustees may remove any ~~member~~ trustee from office on a formal finding of incompetence, neglect of duty, or malfeasance in office. Within 30 days after the office of any elected member becomes vacant for any reason, the board of trustees shall elect a successor to fill that office for the unexpired term. Failure to fill the vacant office shall not invalidate any action taken by the board of trustees provided that said action is taken pursuant to an affirmative vote of not less than four trustees.

34-9-384.

The board of trustees shall possess all powers necessary and convenient to accomplish the objectives prescribed by this article, including, but not limited to, the following:

(1) Not later than 90 days from its appointment, the board of trustees must make and submit to the board for approval such bylaws, rules, regulations, and resolutions as are necessary to carry out its responsibilities, including, but not limited to, the establishment of an application fee. The board of trustees may carry out its responsibilities directly or by contract or other instrument and may purchase such services, borrow money, purchase excess or liability insurance, levy penalties, ~~and~~ fines, and assessments and collect such funds as it deems necessary to effectuate its activities and protect the members of the board of trustees and its administrator, agents, and employees. The board of trustees shall appoint, retain, and employ such persons as it deems necessary to achieve the purposes of the board of trustees. All expenses incurred pursuant to this provision shall be paid from the fund;

(2) The board of trustees shall meet not less than quarterly and shall meet at other times upon the call of the chairperson, issued to the trustees in writing not less than 48 hours prior to the day and hour of the meeting, or upon a request for a meeting presented in

writing to the chairperson not less than 72 hours prior to the proposed day and hour of the meeting and signed by at least a majority of the trustees, whereupon the chairperson shall provide notice issued in writing to the trustees not less than 48 hours prior to the meeting and shall convene the meeting at the time and place stated in the request;

(3) Four trustees shall constitute a quorum to transact business at any meeting, and the affirmative vote of four trustees shall be necessary for any action taken by the board of trustees. No vacancy shall otherwise impair the rights of the remaining trustees to exercise all of the powers of the board of trustees;

(4) The board of trustees shall serve without compensation, but each member shall be entitled to be reimbursed for necessary and actual expenses incurred in the discharge of his or her official duties; and

(5) The board of trustees shall have the right to bring and defend actions only in the name of the fund. ~~Neither the trustees nor their employers shall be liable~~ The administrator, the trustees, and the trustees' employers, agents, and employees shall not be liable jointly or individually for matters arising from or out of the their conduct of the affairs of the fund while acting in the scope of their employment.

34-9-385.

(a) Any participant who files for relief under the federal Bankruptcy Act or against whom bankruptcy proceedings are filed or for whom a receiver is appointed shall file written notice of such fact with the board and the board of trustees within 30 days of the occurrence of such event.

(b) Any person who files an application for adjustment of a claim against a participant who is in default or has filed for relief under the federal Bankruptcy Act or against whom bankruptcy proceedings have been filed or for whom a receiver has been appointed must file a written notice of such fact with the board and the board of trustees within 30 days of such person's knowledge of the event.

(c) Upon receipt of any notice as provided in subsection (a) or (b) of this Code section, the board shall determine whether the participant is insolvent or in default according to procedures established by the board of trustees and approved by the board. Such determination shall be made within a reasonable time after the date the board and board of trustees receive notification as provided in subsection (a) or (b) of this Code section.

(d) When a participant is determined to be in default or an insolvent self-insurer, the board of trustees is empowered to and shall assume on behalf of the participant its outstanding workers' compensation obligations excluding penalties, fines, and claimant's attorneys' fees assessed against the participant pursuant to subsection (b) of Code Section 34-9-108 and shall take all steps necessary to collect, recover, and enforce all outstanding ~~securities~~

security, indemnity, insurance, or bonds furnished by such participant guaranteeing the payment of compensation provided in this chapter for the purpose of paying outstanding obligations of the participant. The board of trustees shall convert and deposit into the fund such ~~securities~~ security and any amounts received under agreements of surety, guaranty, insurance, or otherwise on behalf of the participant. Any amounts remaining from such ~~securities~~ security, indemnity, insurance, bonds, guaranties, and sureties, following payment of all compensation costs and related administrative expenses and fees of the board of trustees including attorneys' fees, and following ~~exhaustion~~ collection of all amounts assessed and received pursuant to subsections (a) and (d) of Code Section 34-9-121 and any applicable rule of the board may be refunded by the fund as directed by the board of trustees, subject to the approval of the board, to the appropriate party one year from the date of final payment and closure of all claims, provided no outstanding self-insured liabilities remain against the fund and the applicable statute of limitations has run.

(e) The ~~board of trustees~~ fund shall be a party in interest in all proceedings involving workers' compensation claims against a participant whose workers' compensation obligations ~~have been~~ are to be paid or assumed by the ~~board of trustees~~ fund and shall be subrogated to the rights of the participant. In such proceedings the ~~board of trustees~~ fund shall assume and may exercise all rights and defenses of the participant, including, but not limited to:

(1) The right to appear, defend, and appeal claims;

(2) The right to receive notice of, investigate, adjust, compromise, settle, and pay claims;  
and

(3) The right to investigate, handle, and controvert claims.

(f) In any proceeding in bankruptcy in which the payment of benefits has been stayed, the board of trustees, through a designated representative, ~~shall~~ may appear and move to lift the stay so that the orderly administration of claims can proceed. The fund shall be subrogated to the rights and claims of any claimant against a participant to the extent of the payments made by the fund to the claimant and may pursue recovery against the participant to the extent of the claims paid or to be paid.

(g) The board of trustees shall notify all employees who have pending claims against a participant for workers' compensation benefits which are subject to the provisions of this article of the name, address, and telephone number of the party administering and defending their claim.

(h) The board may, in its discretion, direct that the Self-insurers Guaranty Trust Fund honor and pay, in whole or in part, the contractual fee arrangement between an attorney and a claimant pursuant to subsection (a) of Code Section 34-9-108, provided that application

to honor the fee arrangement is made after notice pursuant to subsection (g) of this Code section and subject to consideration of objections by any party.

(i) No provision of this Code section shall impair any claims in the insolvent self-insurer's bankruptcy by the board of trustees, any employee, or any provider of services related to the insolvent self-insurer's workers' compensation obligations, to the extent those claims remain unpaid, including but not limited to medical providers or attorneys representing either the insolvent self-insurer or claimants.

34-9-386.

(a)(1) The board of trustees shall, commencing January 1, 1991, assess each participant in accordance with paragraph (2) of this subsection. Upon reaching a funded level of \$10 million net of all liabilities, all annual assessments against participants who have paid at least three prior assessments shall cease except as specifically provided in paragraph (4) of this subsection.

(2) Assessment for each new participant in the first calendar year of participation shall be ~~\$4,000.00~~ \$8,000.00. Thereafter, assessments shall be in accordance with paragraphs (3) and (4) of this subsection.

(3) After the first calendar year of participation, the annual assessment of each participant shall be made on the basis of a percentage of the total of indemnity and medical benefits paid by, or on behalf of, ~~each the~~ participant during the previous calendar year. Except as provided in paragraph (2) of this subsection for the first calendar year of participation and paragraph (4) of this subsection, a participant will ~~not~~ be assessed ~~at any one time an amount in excess of~~ 1.5 percent of the medical and indemnity benefits paid by that participant during the previous calendar year or ~~\$1,000.00~~ \$2,000.00, whichever is greater. The ~~total~~ maximum amount of annual assessments under this paragraph, not including those ~~set out~~ special assessments provided for in paragraph (4) of this subsection, in any calendar year against ~~any one a~~ participant shall ~~not exceed the amount of \$4,000.00~~ be \$8,000.00.

(4) If ~~after the full funded level of \$10 million has been attained,~~ the fund is reduced to an amount below ~~\$7~~ \$5 million net of all liabilities as the result of the payment of claims, the administration of claims, or the costs of administration of the fund, the board of trustees ~~shall~~ may levy a special assessment ~~in proportion to the~~ against participants upon approval by the board, according to the same procedure for assessment provided for set forth in paragraph (3) of this subsection, ~~of the participants~~ in an amount sufficient to increase the funded level to ~~\$7~~ \$5 million net of all liabilities; provided, however, that such special assessment in any calendar year against any one participant shall not exceed ~~the amount of \$10,000.00~~ \$8,000.00.



(5) Funds obtained by such assessments shall be used only for the purposes set forth in this article and shall be deposited upon receipt by the board of trustees into the fund. If payment of any assessment made under this article is not made within 30 days of the sending of the notice to the participant, the board of trustees is authorized to do any or all of the following: ~~proceed in court for judgment against the participant, including the amount of the assessment, the costs of suit, interest, and reasonable attorneys' fees or proceed directly against the security pledged by the participant.~~

(A) Levy fines or penalties;

(B) Proceed in court for judgment against the participant, including the amount of the assessment, fines, penalties, the costs of suit, interest, and reasonable attorneys' fees;

(C) Proceed directly against the security pledged by the participant for the collection of same; or

(D) Seek revocation of the participant's insured status.

(b)(1) The fund shall be liable for claims arising out of injuries occurring after January 1, 1991; provided, however, no claim may be asserted against the fund until the funding level has reached \$1.5 million.

(2) All active participants shall be required to maintain surety bonds or the board of trustees may, in its discretion, accept any irrevocable letter of credit or other acceptable forms of security in the amount of no less than ~~\$100,000.00 until the board, after consultation with the board of trustees, has determined that the financial capability of the trust fund and the participant no longer warrants any form of security~~ \$250,000.00. In addition, each active participant shall be required to purchase excess insurance for statutory limits with a self-insured retention specified by the board, and the excess policy shall include the bankruptcy endorsement required by the board and board of trustees. For participants who are no longer active, security in an amount commensurate with their remaining exposure, as determined by the board, shall be required until all self-insured claims have been closed and all applicable statutes of limitation have run.

(c) A participant who ceases to be a self-insurer shall be liable for any and all assessments made pursuant to this Code section ~~as~~ for so long as indemnity or medical benefits are ~~compensation is~~ paid for claims which originated when the participant was a self-insurer. Assessments of such a participant shall be based on the indemnity and medical benefits paid by the participant during the previous calendar year.

(d) Upon refusal to pay assessments, penalties, or fines to the fund ~~when due or upon refusal to comply with a board order increasing security,~~ the fund may treat the self-insurer as being in ~~noncompliance~~ default with this chapter and the self-insurer shall be subject to revocation of its board authorization to self-insure and forfeiture of its security.

34-9-387.

(a) The board of trustees shall have the right and ~~obligation~~ duty to obtain reimbursement from any participant for payment of compensation obligations in the amount of the participant's compensation obligations assumed by the board of trustees and paid from the fund by the board of trustees as directed by the board, including, but not limited to, claims for all benefits and reasonable administrative and legal costs. The amount of the claims for reimbursement of reasonable administrative and legal costs shall be subject to the approval of the board of trustees.

(b) The board of trustees shall have the right and obligation to use the security deposit of any participant, its excess insurance ~~carrier~~ coverage, and of any other ~~guarantor~~ guarantee to pay the participant's workers' compensation obligation assumed by the board of trustees, including reasonable administrative and legal costs. The amount of the claims for reimbursement of reasonable administrative and legal costs shall be subject to the approval of the board of trustees.

(c) The board of trustees shall be a party in interest in any action or proceeding to obtain the security deposit of a participant for the payment of ~~its~~ the participant's compensation obligations, in any action or proceeding under the participant's excess insurance policy, and in any other action or proceeding to enforce an agreement of any security deposit; or captive or excess insurance carrier; and from any other ~~guarantor~~ guarantee to satisfy such obligations. The fund is authorized to file a claim against a bankrupt participant or the participant's agents and seek reimbursement for any payments made by the fund on behalf of the participant pursuant to this chapter. The fund is subrogated to the claim of any employee whose benefits are paid by the fund. Further, the fund shall have a lien against any reimbursement payments the participant is entitled to from the Subsequent Injury Trust Fund in an amount equal to the payments made by the fund to satisfy the participant's liability for workers' compensation benefits.

34-9-388.

(a) It shall be the duty of the board to report to the board of trustees when the board has reasonable cause to believe that any participant examined or being examined may be in danger of insolvency.

(b) The board shall, at the inception of a participant's self-insured status and at least annually thereafter, so long as the participant remains self-insured, furnish the board of trustees with a complete, original bound copy of each participant's audit performed in accordance with generally accepted ~~auditing~~ accounting standards by an independent certified public accounting firm, three to five years of loss history, name of the person or company to administer claims, and any other pertinent information submitted to the board

to authenticate the participant's self-insured status. The board of trustees may contract for the services of a qualified certified public accountant or firm to review, analyze, and make recommendations on these documents. All financial information submitted by a participant shall be considered confidential and not public information.

(c) The board of trustees shall make reports and recommendations to the board upon any matter germane to the solvency, liquidation, or rehabilitation of any participant. The board of trustees shall examine the same documents as required in subsection (b) of this Code section. Such reports and recommendations shall not be considered public documents.

(d) The board of trustees shall have the authority to review all applications for self-insurance and shall make recommendations to the board concerning the acceptance of the prospective self-insurer. If the board rejects in part or in whole the recommendations of the board of trustees, the board shall give written notice to the board of trustees ten days prior to accepting the application for self-insurance.

34-9-389.

The State of Georgia shall not be responsible for any debts incurred as a result of the operation or administration of this fund."

## **SECTION 5.**

All laws and parts of laws in conflict with this Act are repealed.